

AUG 11 2006

BEFORE THE DEPARTMENT OF INSURANCE      NEBRASKA DEPARTMENT  
STATE OF NEBRASKA                          OF INSURANCE

PETITIONER.

VS.

CARL V. WYLLIE.

RESPONDENT.

## CONSENT ORDER

CAUSE NO. A-1676

Aug 28, 2006 ACCT# 8521 \$590.00  
 NO-INVOICE [REDACTED] TRANS# 1637970  
 WYLLIE, CARL V  
 CHECK# 1565477

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney, Michael C. Boyd, and Carl V. Wyllie ("Respondent"), mutually stipulate and agree as follows:

## JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondent pursuant to *Neb.Rev.Stat.* §44-101.01 and §44-4047, *et seq.*
2. Respondent is licensed as a resident insurance producer under the laws of Nebraska at all times material hereto.

### STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Carl V. Wyllie on August 9, 2006. A copy of the petition was served upon the Respondent at his registered address of Heartland Benefits, Inc., 13304 West Center Street, Suite 225, Omaha, Nebraska 68144 by certified mail, return receipt requested.
2. Petitioner alleges Respondent engaged in conduct violating *Neb. Rev. Stat.* §44-4059(1)(h) as a result of the following conduct:

- a. On or about June 27, 2002, Respondent solicited an application for Allianz Life policy #8379600 "Bonus Dex" flexible premium deferred annuity from Donald and Marilyn Hooper ("Complainants") to replace a deferred variable annuity issued to Complainants in April, 1999 by another insurer (ING USA f/k/a Golden American Life Insurance Company);
- b. On or about June 28, 2002, Respondent solicited an application for Allianz Life policy #8379644 "Bonus Dex" flexible premium deferred annuity from Complainant Donald Hooper to replace a second deferred variable annuity issued to Complainant Donald Hooper in April, 1999 by another insurer (ING USA f/k/a Golden American Life Insurance Company);
- c. On or about June 28, 2002, Respondent solicited an application for Allianz Life policy #8379690 "Bonus Dex" flexible premium deferred annuity from Complainant Marilyn Hooper to replace a third deferred variable annuity issued to Complainant Marilyn Hooper in April, 1999 by another insurer (ING USA f/k/a Golden American Life Insurance Company);
- d. During the solicitation of each Allianz Life policy, Respondent represented the benefit of the replacement Allianz annuity products as providing a 10% bonus on the premiums transferred from the Complainants' 3 ING USA annuity policies to the Allianz policies, as well as the "index crediting option" which would have allowed the Complainants to obtain a higher return on their policy premium investment, but with "market" protection of their investment if the market account went down. However, the 3 Allianz annuity replacement policy applications elected the "fixed interest option" which was irreversible for the first policy year. Complainants' existing ING USA policies contained the same 3% fixed rate option that could have been elected at any time. Respondent was not only familiar with the performance of Complainants' existing ING USA annuities, but was also aware of the terms of said annuity policies before encouraging their replacement with the Allianz Life annuities;
- e. Respondent recommended replacement of Complainants' ING USA annuities with those of Allianz Life even though Complainants' Guaranteed Death Benefit cumulative loss due to the replacement of the 3 ING policies was approximately \$44,000. Additionally, the Complainants were subject to surrender charges for the replaced ING USA policies in the amount of \$6,654.78 plus \$120 in premature policy fees;

- f. Respondent represented to Complainants that they would recoup some of their policies' surrender charge losses on the transfer (replacement) by the Allianz Life policies 10% bonus on the transfer premiums. However, the 10% bonus was not applicable to current annuity policy values; only the policies' annuitization value. Therefore, the 10% bonus would only have been realized if/when the Allianz Life policies annuitized, with the full annuity value available only after 5 years;
- g. Further, there was no advantage to the Complainants in replacing their ING USA annuity policies with the Allianz Life annuities as applied for since the Respondent could have elected the same 3% fixed rate option by reallocating their sub-account investment under their replaced ING USA annuities without incurring the losses and costs from these replacements noted in subparagraph e above. Eventhough the Complainants were unhappy with the investment performance of their ING USA policies, that was not a legitimate basis for the Respondent to proceed with replacement of those policies with the Allianz Life annuities that clearly resulted in the Complainants incurring the losses and costs noted. The only person who benefited from these annuity replacements was the Respondent who earned commissions for selling the Allianz Life policies.

3. Respondent was informed of his right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving his right to a public hearing, Respondent also waives his right to confrontation of witnesses, production of evidence, and judicial review.

4. Respondent admits the allegations contained in the Petition and restated in Paragraphs 2 above.

#### CONCLUSIONS OF LAW

Respondent's conduct as alleged above constitutes a violation of *Neb.Rev.Stat. §44-4059(1)(h)*.

## CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondent, Carl V. Wyllie, that Respondent shall pay an administrative fine in the amount of \$500.00 due within thirty (30) days after the date the Director of Insurance signs this Consent Order. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose of enabling the Respondent or the Department to make application for such further orders as may be necessary.

In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing his or her signature below.

*Michael C. Boyd*  
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 Attorney for Nebraska

Attorney for Nebraska  
Department of Insurance  
941 "O" Street, Suite 400  
Lincoln, Nebraska 68508  
(402)471-2201

Carl V. Wyllie

Carl V. Wyllie


Date August 11, 2006

August 11, 2006  
Date

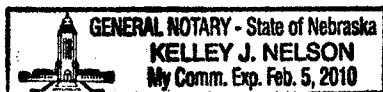
Date \_\_\_\_\_

State of Nebraska )  
 ) ss.  
County of Douglas )

On this 11<sup>th</sup> day of August, 2006, Carl V. Wyllie personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be his voluntary act and deed.

  
Notary Public

~~Notary Public~~



CERTIFICATE OF ADOPTION

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs. Carl V. Wyllie, Cause No. A-1676.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



L. TIM WAGNER  
Director of Insurance

8/11/06

Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was served upon Respondent by mailing a copy to his counsel, William G. Garbina, 100 Scoular Building, 2027 Dodge St., Omaha, NE 68102 by certified mail, return receipt requested, on this 14<sup>th</sup> day of August, 2006.

